

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

**Chief Bankruptcy Judge**

**Sacramento, California**

**May 12, 2022 at 10:30 a.m.**

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1. <a href="#"><u>21-21789-E-7</u></a> <b>CORINNA LEAL</b> <a href="#"><u>DNL-2</u></a> <b>Gabriel Liberman</b>	<b>MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JUAN JACINTO LEAL 4-4-22 [28]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2022. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Approval of Compromise is granted.</b>
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Susan K. Smith, the Chapter 7 Trustee, (“Movant”) requests that the court approve a

compromise and settle competing claims and defenses between Debtor Corinna Cheri Leal (“Debtor”) and Debtor’s ex-spouse Juan Jacinto Leal (“Ex-Spouse”), collectively, “Settlors”. The claims and disputes to be resolved by the proposed settlement are to settle Debtor’s claim to their divorce settlement with Ex-Spouse in which Ex-Spouse was required to pay Debtor either \$61,000.00 or half of the sale proceeds of the real property commonly known as 241 Turner Lane, Yakima, Washington.

Movant and Settlors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 30):

- A. Ex-Spouse shall pay Movant \$61,000.00 on or before March 21, 2022.
- B. Debtor’s interest in the Property shall be deemed conveyed to Ex-Spouse after the receipt of the Settlement Payment and the Bankruptcy Court’s approval of this agreement.
- C. Debtor’s Wild Card exemption against the Property shall be subordinated to all allowed administrative and timely filed unsecured claims.
- D. Movant and Ex-Spouse shall exchange broad releases including a waiver of provisions of California Civil Code § 1542 as to claims relating to 241 Turner Lane.

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Movant argues this factor supports the settlement because it is difficult to predict whether Debtor's interest is limited to \$61,000.00 or whether the Family Law Case Judgment actually obligated Ex-Spouse to sell the property.

### **Difficulties in Collection**

Movant argues this factor is neutral because Movant is not aware of any difficulties that ay be encountered since the claim involves an interest in known real property.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues this factor favors the settlement because litigation would drive-up expenses to the estate for an unknown benefit and would be disruptive to the family.

### **Paramount Interest of Creditors**

Movant argues this factor supports the settlement because subordinating the Wild Card will allow administrative and timely filed unsecured claims. Movant ensures all claims are paid in full.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows Trustee to collect \$61,000.00 for the benefit of the bankruptcy and creditors. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Susan K. Smith, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant, Debtor Corinna Cheri Leal and Juan Jacinto Leal (collectively, "Settlors") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 30).

2 thru 3, and  
Item 1 on 11:00 Calendar

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and U.S. Trustee on April 5, 2022. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Approval of Stipulation Between Trustee, Debtor, and Spouse is granted.**

The Chapter 7 Trustee, J. Michael Hopper ("Trustee") requests that the court approve a stipulation with Sean Eric Almeida ("Debtor") and Becky Almeida ("Spouse") which provides Debtor and Spouse irrevocably consenting to Trustee's sale of the real property commonly known as 22 Solano Drive, Dixon, ("Property")

## **STIPULATION**

Trustee has entered into a Stipulation with Debtor and Spouse stipulating for an order regarding the sale of property and distribution of proceeds, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 114):

- A. Trustee's sale of the Property is free and clear of all liens, encumbrances,

and claims of interest either Debtor or Spouse has or could assert against the Property.

- B. Debtor and Spouse shall each receive \$30,000.00 as their Homestead Exemption with the balance of the Homestead Exemption retained by Trustee for the benefit of unsecured creditors.
- C. Trustee waives the reinvestment requirement in California Code of Civil Procedure § 704.720.
- D. All outstanding domestic support obligations owed through July 31, 2021 are deemed paid in full.

## **DISCUSSION**

The Stipulation is based on Spouse having an account for a line of credit with NFCU which caused NFCU to assert a lien against the Property. NFCU's judgment was bifurcated by this court to determine only a portion of the pre-separation judgment debt could be enforced on the Property, but could be enforced to the separate property of Spouse. On January 24, 2022, NFCU received \$16,797.51 from the Trustee's sale of the Property. There are now \$226,901.07 in net sale proceeds subject to the claims of NFCU and Debtor and Spouse's homestead exemptions. The Stipulation responsibly addresses the distribution of the proceeds.

The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Stipulation filed by J. Michael Hopper ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Stipulation between Trustee and Sean Eric Almeida ("Debtor") and Becky Almeida ("Spouse" is granted, and

- A. Trustee's sale of the Property is free and clear of all liens, encumbrances, and claims of interest either Debtor or Spouse has or could assert against the Property.
- B. Debtor and Spouse shall each receive \$30,000.00 as their Homestead Exemption with the balance of the Homestead Exemption retained by Trustee for the

benefit of unsecured creditors.

- C. Trustee waives the reinvestment requirement in California Code of Civil Procedure § 704.720.
- D. All outstanding domestic support obligations owed through July 31, 2021 are deemed paid in full.

The respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dckt. 114).

3. <a href="#"><u>19-26574-E-7</u></a> <a href="#"><u>DNL-12</u></a>	SEAN ALMEIDA Timothy Walsh	<b>MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NAVY FEDERAL CREDIT UNION 4-5-22 <a href="#"><u>116</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and U.S. Trustee on April 5, 2022. By the court’s calculation, 37 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Approval of Compromise is granted.</b>
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J. Michael Hopper, the Chapter 7 Trustee, (“Trustee”) requests that the court approve a compromise and settle competing claims and defenses with Navy Federal Credit Union (“Creditor”),

collectively (“Settlors”). The claims and disputes to be resolved by the proposed settlement is the remaining judgment balance asserted by a lien on Debtor’s real property commonly known as 22 Solano Drive, Dixon, California (“Property”) that was bifurcated pursuant to court order as community property of Debtor and their spouse, Becky Almeida (“Spouse”), and separate property of Spouse alone. Creditor received \$16,797.51 from Trustee’s sale of Property, but still has a balance of \$41,110.15. This compromise would settle the outstanding balance of the Judgment.

Related hereto, the Trustee, Debtor, and Spouse have entered into a Stipulation dividing the homestead exemption amount of \$100,000, with \$40,000 to the Trustee for the Bankruptcy Estate, \$30,000 to Debtor, and \$30,000 to Spouse.

Trustee and Creditor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 119):

- A. Settlement Payment - Creditor to receive \$25,000.00 as full and final payment of the Judgment from net proceeds from the sale of the Property. Creditor shall execute and deliver to Trustee full satisfaction of Judgment and releases of all enforcement of judgment liens, including abstracts of judgment.
- B. Trustee’s Application to Issue Discovery (Docket Control No. DNL-4) - Trustee’s Application shall be dismissed without prejudice, each party bearing their own attorney’s fees and costs.
- C. Releases - Trustee and Creditor will exchange broad releases, including a waiver of California Civil Code § 1542, as to claims relating to the Property.

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Trustee argues that the four factors have been met.

### **Probability of Success**

Trustee argues this factor supports the Compromise because the outcome of litigation is difficult to predict and it is still unclear what portion and priority of the Judgment balance attaches to the proceeds of Trustee's sale.

### **Difficulties in Collection**

Trustee argues this factor is neutral because they are not seeking to collect on any claim and the net proceeds are already in possession of the estate.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Trustee argues this factor supports the compromise because any litigation would further drive-up expenses while the issue has already been partially resolved by Creditor.

### **Paramount Interest of Creditors**

Absent the agreement, an extra approximately \$15,000 may attach to the net proceeds. By settling the balance for \$25,000.00, the Trustee resolves the claim allowing more proceeds for unsecured creditors.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows for satisfaction of a claim for less than the Judgment balance and additional proceeds to go towards unsecured creditors. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by J. Michael Hopper, the Chapter 7 Trustee, ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion for Approval of Compromise between Trustee and Navy Federal Credit Union (“Creditor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 119).

# FINAL RULINGS

4.     [20-24123](#)-E-11     **RUSSELL LESTER**     **MOTION TO SELL**  
          [FWP-39](#)            Thomas Willoughby     4-14-22 [[852](#)]

**Final Ruling: No appearance at the May 12, 2022 Hearing is required.**

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The Court having dismissed this Motion (Order, Dckt. 863), **the Matter is removed from the Calendar.**